

LAWRENCE COLEMAN,)	
)	
Petitioner,)	
)	
vs.)	Case No. 4:98CV1015 CDP
)	
MIKE KEMNA,)	
)	
Respondent.)	

This matter is before the Court on the petitioner’s “Petition for Federal Rule 60(b) Seeking to Reopen Original § 2254 Habeas Corpus to Vacate, Set Aside and Correct Judgment.” The Court denied the petition for habeas corpus relief pursuant to 28 U.S.C. § 2254 by order dated October 12, 1999, and in that order also denied a Certificate of Appealability. Petitioner then filed a motion to alter or amend the judgment, which the Court denied on October 28, 1999. He then filed a notice of appeal, and his appeal was dismissed by the Court of Appeals on March 30, 2000. Petitioner further filed a “Petition for Rule 60(b)” on April 10, 2000, and that petition was denied on April 11, 2000.

Petitioner's original habeas petition was dismissed because it was not timely filed. The petition was barred by 28 U.S.C. § 2244(d)'s one-year statute of

limitations. Petitioner's current motion does not raise any new arguments on this point. Petitioner's habeas petition continues to be untimely, and it must be denied.


A habeas petitioner cannot use Rule 60 as a way of avoiding the bar on successive petitions set out in 28 U.S.C. § 2244(a) and (b), or for avoiding the limitations period set out in 28 U.S.C. § 2244(d)(1). Nor is a Rule 60 motion a substitute for an appeal. Petitioner's Rule 60 motion provides no basis for any relief.

Accordingly,

IT IS HEREBY ORDERED that petitioner's "Petition for Federal Rule 60(b) Seeking to Reopen Original § 2254 Habeas Corpus to Vacate, Set Aside and Correct Judgment" [#33] is denied.

IT IS FURTHER ORDERED that petitioner's motion for appointed counsel [#34] is denied.

IT IS FURTHER ORDERED that the Court will not issue a Certificate of Appealability from this order.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 22nd day of May, 2009.